

2019citasspcf

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA

4 v.

19 CR 910 (LMS) (NSR)

5 PLEA

6 GIOVANNI TASSONE,

7 Defendant.

8 -----x
9
10 United States Courthouse
11 White Plains, N.Y.
12 December 18, 2019

13
14
15 Before: THE HONORABLE LISA MARGARET SMITH, Magistrate Judge
16
17
18 APPEARANCES

19 GEOFFREY S. BERMAN
20 United States Attorney for the
21 Southern District of New York
22 MATHEW ANDREWS
23 Assistant United States Attorney

24
25 FEDERAL DEFENDERS OF NEW YORK, INC.
26 Attorneys for Defendant
27 JASON SER

*Proceeding recorded via digital recording device.

CHRISTINA M. ARENDS-DIECK, RPR, RMR, CRR
(914) 390-4103

2019citasspcf

1 THE DEPUTY CLERK: In the matter of the United States
2 of America v. Giovanni Tassone.

3 Counsel, please note your appearance for the record.

4 MR. ANDREWS: Good morning, your Honor. Mathew
5 Andrews for the government.

6 THE COURT: Good morning, Mr. Andrews.

7 MR. SER: Good morning, your Honor. Jason Ser,
8 Federal Defenders, for Mr. Tassone.

9 THE COURT: Good morning, Mr. Ser.

10 MR. SER: Who is present on bond.

11 THE COURT: Good morning, Mr. Ser.

12 MR. SER: Good morning.

13 THE COURT: Mr. Ser, am I correct that your client
14 has previously appeared on a complaint?

15 MR. SER: Yes, your Honor.

16 THE COURT: And that it is his desire to waive
17 indictment, consent to the filing of an information and,
18 depending on which district judge is selected, enter a plea?

19 MR. SER: That is all correct, your Honor.

20 THE COURT: All right.

21 Mr. Tassone, I want to advise you that this is not a
22 trial. It is my understanding that you have decided to waive
23 indictment, consent to the filing of an information, and that
24 you may decide to enter a plea of guilty in this case.

25 This proceeding is a preliminary proceeding at which

2019citasspcf

1 you will be advised of certain of your rights and a district
2 judge will be selected to hear your case, after which you may
3 have the option of entering your plea before that district
4 judge or you may have the option of entering your plea before
5 me.

6 This proceeding is also for the purpose of ensuring
7 that you are aware of your rights in connection with that plea
8 and that any waiver of those rights is knowing and voluntary
9 prior to entering your plea of guilty, if you still decide to
10 do that.

11 During this proceeding, I will also ask you some
12 questions to make sure that you are competent to plead guilty,
13 and, by that, I mean that I need to determine whether you are
14 able to understand what is going on here today and that you are
15 not under the influence of any physical or mental or emotional
16 condition or affected by any controlled substance which may
17 impact upon your ability to understand what is going on. Do
18 you understand that, sir?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Mr. Tassone, if at any time you do not
21 hear or understand what I say to you, I want you to interrupt
22 me so that I can repeat and explain what I've said and so that
23 you can have an opportunity to consult with Mr. Ser to make
24 sure that you have heard and understood everything I've said
25 and everything I've asked you. Do you understand that?

2019citasspcf

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And will you do that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You have an absolute right to be
5 represented by counsel at this and at every stage of the
6 proceedings against you, and you have the right to consult with
7 your attorney prior to answering any questions. Do you
8 understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: For that reason, you should consult with
11 Mr. Ser before answering any further questions, including
12 questions that I'm going to ask you during this proceeding. Do
13 you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: If you were to become unsatisfied with
16 Mr. Ser's services, you would be entitled to apply to the Court
17 for a new attorney to represent you, and if the Court was still
18 satisfied that you could not afford to hire a lawyer and that
19 there was an appropriate reason to relieve your current lawyer,
20 a new lawyer would be appointed to represent you with no cost
21 to you. Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Mr. Lynch, would you place the defendant
24 under oath or affirmation, please.

25 (Defendant Giovanni Tassone sworn)

2019citasspcf

1 THE COURT: It is important for you to understand
2 that if you knowingly make a false statement during these
3 proceedings, you could be subject to prosecution for the crime
4 of perjury or for making a false statement to the Court, and
5 you could face a punishment of up to five years in prison and a
6 \$250,000 fine for committing such a crime. Such punishment
7 would be separate and apart and from any sentence you may be
8 facing on the crime charged in the felony information. In
9 addition, any statement that you make during this proceeding
10 may be used against you for purposes of such a prosecution. Do
11 you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: What's your full name, sir?

14 THE DEFENDANT: Giovanni Tassone.

15 THE COURT: How old are you.

16 THE DEFENDANT: Forty-eight.

17 THE COURT: Do you read, write, speak and understand
18 the English language?

19 THE DEFENDANT: Yes.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT: High school.

22 THE COURT: Have you been treated within the last
23 three months for any mental illness or for addiction to drugs
24 or to alcohol?

25 THE DEFENDANT: No, your Honor.

2019citasspcf

1 THE COURT: Have you, either today or at any other
2 time in your life, taken or used any drugs, marijuana, alcohol,
3 medication or any other substance which currently affects your
4 ability to think or to understand these proceedings that are
5 going on here today?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Mr. Ser, have you discussed this matter
8 fully with Mr. Tassone?

9 THE DEFENDANT: I have, your Honor.

10 THE COURT: And are you satisfied that he is fully
11 capable of understanding and participating in this proceeding?

12 THE DEFENDANT: I am.

13 THE COURT: Mr. Andrews, do you have any doubt that
14 the defendant is competent to participate in this proceeding?

15 MR. ANDREWS: No, your Honor.

16 THE COURT: I'm satisfied, on the basis of these
17 representations and also my observations of the defendant, that
18 this defendant is fully competent to understand and participate
19 in this proceeding.

20 Mr. Tassone, you are charged under this felony
21 information with one count of possession of child pornography.
22 Have you read this felony information?

23 THE DEFENDANT: Yes, I have, your Honor.

24 THE COURT: Mr. Lynch, would you arraign the
25 defendant on the waiver of indictment, please.

2019citasspcf

1 THE DEPUTY CLERK: Mr. Tassone, have you signed this
2 waiver of indictment?

3 THE DEFENDANT: Yes.

4 THE DEPUTY CLERK: Have you signed it voluntarily?

5 THE DEFENDANT: Yes.

6 THE DEPUTY CLERK: Before signing this waiver, did
7 you discuss it with your attorney?

8 THE DEFENDANT: Yes.

9 THE DEPUTY CLERK: Did your attorney explain this
10 waiver to you?

11 THE DEFENDANT: Yes.

12 THE DEPUTY CLERK: Do you understand that you are
13 under no obligation to waive indictment?

14 THE DEFENDANT: Yes.

15 THE DEPUTY CLERK: Do you understand that if you
16 don't waive indictment and the government wants to prosecute
17 you, they will have to present your case to a grand jury, which
18 may or may not indict you?

19 THE DEFENDANT: Yes.

20 THE DEPUTY CLERK: Do you understand what a grand
21 jury is?

22 THE DEFENDANT: Yes.

23 THE DEPUTY CLERK: Have you seen a copy of the felony
24 information?

25 THE DEFENDANT: Yes.

CHRISTINA M. ARENDS-DIECK, RPR, RMR, CRR
(914) 390-4103

2019citasspcf

1 THE DEPUTY CLERK: Do you waive its public reading?

2 THE DEFENDANT: I agree, yes.

3 THE COURT: The waiver of indictment is accepted and
4 it's marked as Court Exhibit 1 for purposes of today's
5 proceeding.

6 Mr. Ser, for purposes of this preliminary proceeding,
7 how does your client plead?

8 MR. SER: Not guilty, your Honor.

9 THE COURT: A not guilty plea is entered.

10 Before a district judge is selected, is there any
11 issue with regard to bail?

12 MR. ANDREWS: No, your Honor.

13 THE COURT: Bail will be continued.

14 It is a Wheel A case. May I have a card, please,
15 Mr. Lynch.

16 (Pause)

17 MR. SER: It's funny. Clients don't believe when I
18 tell them we're spinning a wheel to pull a judge.

19 THE COURT: It's like bingo.

20 The matter is assigned to Judge Román.

21 Judge Román does have a standing order which allows a
22 guilty plea to be entered before the available magistrate judge
23 on consent of the parties.

24 Mr. Ser, is it your client's wish to proceed before
25 me?

2019citasspcf

1 MR. SER: Please, your Honor.

2 THE COURT: Mr. Tassone, this proceeding is referred
3 to as a plea allocution. I want you to understand that you
4 have the absolute right to have this plea allocution conducted
5 before a United States District Judge. It is the district
6 judge -- in this case, Judge Román -- who will impose sentence
7 in your case.

8 If you consent and if you agree, then I will conduct
9 the plea allocution and I will then make a report to Judge
10 Román in which I will recommend whether or not he should accept
11 your plea of guilty. I will make that recommendation based on
12 the information that is brought out during today's proceedings.

13 It is important for you to understand that the Court
14 will not accept your plea unless the Court is satisfied that
15 you fully understand all of your rights and that you are, in
16 fact, guilty. Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that you have an
19 absolute right to have this plea allocution conducted before a
20 United States District Judge?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you agree and is it your wish that I
23 should conduct the plea allocution?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Mr. Lynch, would you have the defendant

1 2019citasspcf

1 identify his signature on the consent form, please.

2 THE DEPUTY CLERK: Mr. Tassone, I'm showing you a
3 consent form. Is this your signature affixed to the document?

4 THE DEFENDANT: Yes, it is.

5 THE DEPUTY CLERK: Have you read this document and
6 discussed it with your attorney?

7 THE DEFENDANT: Yes.

8 THE COURT: Did anyone threaten you or coerce you or
9 promise you anything in order to get you to sign the consent
10 form?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Did you sign the form freely and
13 voluntarily?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Mr. Ser, do you know of any reason why
16 the waiver and consent to proceed with a felony plea allocution
17 before a United States Magistrate Judge should not be accepted?

18 MR. SER: No, your Honor.

19 THE COURT: I find that Giovanni Tassone is fully
20 competent and capable of waiving his right to appear before a
21 United States District Judge in order to enter his plea of
22 guilty. I, therefore, accept the consent form, which I have
23 signed and which will remain a part of the Court's record as
24 Court Exhibit 2 for today's date.

25 Do you understand, sir, that your right to be

1 2019citasspcf

1 represented by an attorney continues through every stage of the
2 proceedings, including trial and appeal, and that you have this
3 right whether or not you choose to plead guilty to this
4 offense? Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Have you had sufficient opportunity to
7 consult with Mr. Ser about your case and especially about your
8 decision to plea of guilty?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Are you satisfied with the services which
11 Mr. Ser has provided to you?

12 THE DEFENDANT: Very, your Honor. Thank you.

13 THE COURT: Have you told him everything you know
14 about this case?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: I have before me a copy of a plea
17 agreement dated December 18, 2019. The original plea agreement
18 is to be marked as Government Exhibit 1 and will remain in the
19 custody of government's counsel.

20 Mr. Lynch, would you have the defendant identify his
21 signature on the last page of the original plea agreement,
22 please.

23 THE DEPUTY CLERK: Mr. Tassone, I'm showing you this
24 plea agreement. Is this your signature affixed to the plea
25 agreement?

2019citasspcf

1 THE DEFENDANT: Yes, it is.

2 THE DEPUTY CLERK: Have you read this document and
3 discussed it with your attorney?

4 THE DEFENDANT: Yes, I have.

5 THE COURT: Mr. Ser, did you review each and every
6 part of the plea agreement with Mr. Tassone?

7 MR. SER: Yes, your Honor.

8 THE COURT: Mr. Tassone, are you satisfied that you
9 understand the entire plea agreement which Mr. Ser has reviewed
10 with you?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you have any questions either for
13 Mr. Ser or for me about what this plea agreement says?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Does the plea agreement contain the
16 complete understanding between you and the government in
17 connection with this case?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that anything which is
20 not set forth in the written plea agreement or which is not
21 told to me at this time, on the record, will not be binding on
22 the outcome of your case? Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Mr. Andrews, is there anything beyond the
25 written plea agreement that the Court should be aware of?

2019citasspcf

1 MR. ANDREWS: No, your Honor.

2 THE COURT: Mr. Ser, is there any other agreement or
3 understanding that the Court should know about?

4 MR. SER: No, your Honor.

5 THE COURT: Mr. Tassone, did you sign the plea
6 agreement freely and voluntarily?

7 THE DEFENDANT: Yes, I did, your Honor.

8 THE COURT: Did anyone force you or coerce you or
9 threaten you or promise you anything, other than what is set
10 forth in the written plea agreement, in order to induce you to
11 sign that agreement?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Mr. Tassone, if you were convicted of the
14 charge which is contained in this felony information either
15 after trial or by plea of guilty, you would be subject to a
16 maximum term of imprisonment of twenty years, a mandatory
17 minimum term of supervised release of five years and a maximum
18 term of supervised release of life, a maximum fine of the
19 greatest of \$250,000 or twice the gross gain or twice the gross
20 loss resulting from the offense, a mandatory \$100 special
21 assessment, plus an additional assessment of \$5,000.

22 If you are sentenced to a term of imprisonment, even
23 if you are sentenced to the maximum term of imprisonment, and
24 if you are also sentenced to a term of supervised release, if
25 you then violate the conditions of supervised release, you

2019citasspcf

1 could be sentenced to an additional term of up to two years for
2 violating the conditions of your supervised release. In
3 addition, if you violate the conditions of supervised release,
4 you would not receive credit for any time already served in
5 prison or for time served on supervised release.

6 You are also subject to the possibility of an order
7 of forfeiture or restitution, and the Court must order
8 restitution in accordance with Title 18, United States Code,
9 Sections 2259, 3663 and 3663(A).

10 Mr. Andrews, do we have a maximum amount of
11 restitution or has it not been calculated?

12 MR. ANDREWS: It has not been calculated yet, your
13 Honor.

14 THE COURT: And is there any possible forfeiture
15 here?

16 MR. ANDREWS: I don't believe so, your Honor.

17 THE COURT: All right.

18 Do you understand, Mr. Tassone, that these are the
19 possible sentences that could be imposed following your plea of
20 guilty in this matter?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: I'm also required to advise you that if
23 you are not a United States citizen or if you are a naturalized
24 citizen, a finding that you are guilty of a felony offense may
25 have a negative impact upon your immigration status and upon

2019citasspcf

1 any application you may have made in the past or which you may
2 make in the future for permission to remain in the United
3 States or to become a United States citizen. You also may be
4 subject to an order of deportation as a result of this guilty
5 plea if you are not a United States citizen or if you are a
6 naturalized citizen and there was some flaw in your
7 naturalization process. Under certain circumstances,
8 deportation may be mandatory. Additionally, if you are
9 deported, you may be prohibited from reentering the United
10 States permanently unless you are able to get permission to
11 reenter from the Attorney General of the United States or from
12 the Secretary of Homeland Security. Do you understand that,
13 sir?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Have you discussed the potential
16 immigration consequences fully with your attorney?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that you are pleading
19 guilty to a felony offense and that such an adjudication may
20 deprive you of certain valuable civil rights, which may include
21 the right to vote; the right to hold public office; the right
22 to serve on a jury; the right to possess any type of firearm,
23 including rifles and shotguns; the right to be considered for
24 certain types of employment or to be bonded or to serve in the
25 United States Military; and the right to possess or obtain

15 2019citasspcf

16 certain government-issued licenses, including licenses that may
17 be required in certain professions and occupations? Do you
18 understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that, as a result of
21 your guilty plea to this offense, you would be required to
22 register under the Sex Offender Registration and Notification
23 Act and that you would then be required to update that
24 registration for the rest of your life whenever you have a
25 change in circumstances, including a change of name, residence,
employment or status as a student, and that such an updating of
your registration would be required to occur within three days
of any such change? Do you understand that?

26 THE DEFENDANT: Yes, your Honor.

27 THE COURT: Mr. Andrews, do you know whether a guilty
28 plea to this offense also falls under the Adam Walsh Child
29 Protection and Safety Act?

30 MR. ANDREWS: I do not know, your Honor, but I could
31 find out.

32 THE COURT: Mr. Ser, any idea?

33 MR. SER: It does, your Honor, so the advisement I
34 think would be appropriate.

35 THE COURT: All right.

36 You should understand that, as a result of your
37 guilty plea to this offense, you may face the possibility of

2019citasspcf

1 civil commitment under the Adam Walsh Child Protection and
2 Safety Act following the completion of any term of imprisonment
3 that you may serve. That Act permits the Attorney General of
4 the United States or the Director of the Bureau of Prisons to
5 certify that a prisoner approaching the end of a term of
6 incarceration may qualify as a sexually dangerous person as
7 defined by the Adam Walsh Act. A hearing would then be held at
8 which the government would be required to demonstrate by clear
9 and convincing evidence that the inmate is a sexually dangerous
10 person as defined by the Adam Walsh Act, and if the Court
11 agrees that the evidence has, in fact, established this, then
12 the inmate will be committed to custody for a further period of
13 time until the Court determines that the inmate is no longer
14 sexually dangerous. Do you understand that, sir?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Have you discussed this consequence with
17 Mr. Ser?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand, Mr. Tassone, that
20 these are the possible legal consequences of entering a guilty
21 plea in this case?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that the United States
24 Sentencing Commission has issued guidelines for judges to
25 follow in determining the appropriate sentence in a criminal

2019citasspcf

1 case? Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you also understand that these
4 guidelines are not mandatory, but they must be considered by
5 the court along with other factors which are listed at Title
6 18, United States Code, Section 3553 and the judge must
7 consider all of these things when the judge determines the
8 appropriate sentence to impose, including whether to grant
9 departures from the guidelines, both upward departures and
10 downward departures? Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Have you and Mr. Ser talked about how the
13 sentencing guidelines would be calculated in your case?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: The plea agreement in this case sets
16 forth a stipulated sentencing range of 78 to 97 months in
17 prison and a stipulated fine range of \$25,000 to \$250,000. Do
18 you understand that this is simply an understanding, an
19 agreement, between you and your attorney and the attorney for
20 the government and that these figures are not binding on the
21 district judge when he imposes sentence? Do you understand
22 that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that the district judge
25 will consider the guidelines, but that he will impose a

152019citasspcf

1 sentence in accordance with the statute, which, in this case,
2 means that the prison term will be not more than twenty years?
3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that the Court will not
6 be able to determine the appropriate sentence for your case
7 until after a presentence report has been prepared and until
8 you and your attorney as well as the government have had an
9 opportunity to challenge the facts that are reported in the
10 presentence report as well as the calculation of the sentencing
11 guideline range and any sentencing recommendation in that
12 report? Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you also understand that if there are
15 any objections to the presentence report, that those objections
16 will be ruled on by the Court and, if necessary, a hearing will
17 be held to determine what information is relevant to the
18 Court's determination of the sentence? Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you also understand that, pursuant to
21 the plea agreement, you have agreed that you will not file any
22 direct appeal or any collateral challenge to any sentence which
23 is within or below the stipulated guidelines range of 78 to 97
24 months in prison and that the government has, likewise, agreed
25 that it will not appeal any sentence that is within or above

1 2019citasspcf

1 that stipulated guidelines range? Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you also understand that you have
4 agreed not to appeal any term of supervised release that is
5 less than or equal to the statutory maximum of three years?
6 You have also agreed not to appeal any fine that is less than
7 or equal to \$250,000 and the government has agreed not to
8 appeal any fine that is greater than or equal to \$25,000. Do
9 you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that one effect of this
12 plea agreement is that you are giving up certain rights that
13 you might have had to appeal or otherwise attack the sentence
14 imposed by the court, although you do retain certain rights to
15 assert a claim of ineffective assistance of counsel?

16 Despite retaining those rights, you also waive the
17 right to make certain claims, such as any claim of ineffective
18 assistance of counsel relating to counsel's effectiveness
19 during the sentencing proceeding. Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that if you disagree
22 with the sentencing decision that is reached by the court, that
23 will not give you a basis to withdraw your plea of guilty? Do
24 you understand that?

25 THE DEFENDANT: Yes, your Honor.

2019citasspcf

1 THE COURT: Do you understand that parole has been
2 abolished and if you are sentenced to a prison term, you will
3 not be eligible for early release on parole? Do you understand
4 that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Even though you would not be eligible for
7 parole, you may, if you are sentenced to a term of
8 imprisonment, be eligible to earn credit for good behavior, but
9 even if you were to succeed in earning credit for good
10 behavior, you would be required to serve at least 85 percent of
11 any prison term before you may be eligible for release. Do you
12 understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand, sir, that you do not
15 have to plead guilty and you have an absolute right to plead
16 not guilty and to have the matter go to trial by judge or by
17 jury? Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that if you choose to
20 plead not guilty, you are entitled to have a speedy and public
21 trial of your case? Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that, at any trial of
24 this matter, you would be entitled to the presumption of
25 innocence and that the presumption would remain with you until

2019citasspcf

1 the government proves each and every element of the crime
2 charged against you beyond a reasonable doubt to the
3 satisfaction of the judge if it is a judge trial or to the
4 unanimous satisfaction of the jury if it is a jury trial? Do
5 you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: At such a trial, you would have the
8 right, with the assistance of your attorney, to confront and
9 cross-examine the witnesses against you. You would have the
10 right to call witnesses to testify for you and to have
11 subpoenas issued to compel witnesses to give testimony and to
12 produce evidence. You would also have the right to testify at
13 your trial, but you could not be forced to testify. If you
14 decided not to testify, your decision to remain silent could
15 not be held against you in any way.

16 At your trial, you would also have the right I have
17 spoken of to the assistance of an attorney and to have an
18 attorney to represent you without fee if you could not afford
19 counsel.

20 Additionally, if you were convicted of any charge at
21 a trial, you would have the right to appeal or otherwise attack
22 the verdict.

23 Do you understand, Mr. Tassone, that if you plead
24 guilty to the charge set forth in this felony information, that
25 you would give up your right to a trial and, except for the

2019citasspcf

1 right to counsel, which you retain, you would give up all the
2 other rights which I have explained to you here? Do you
3 understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Mr. Tassone, have you clearly heard and
6 understood everything I have said to you?

7 THE DEFENDANT: Yes, I have, your Honor.

8 THE COURT: Have you understood each of rights that I
9 have asked you about?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you have any questions either for me
12 or for Mr. Ser about anything I've said or about anything I've
13 asked you?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: You may be seated briefly.

16 Mr. Andrews, what are the elements of the offense and
17 what is the government prepared to prove at trial in order to
18 establish those elements?

19 MR. ANDREWS: The defendant is charged in Count One
20 of the information with possession of child pornography, in
21 violation of 18, United States Code, 2252(a) (5) (B).

22 In order to prove the defendant guilty of the offense
23 to which he is pleading, the government will have to prove each
24 of the following elements beyond a reasonable doubt:

25 First, that the defendant knowingly possessed a book,

2019citasspcf

1 magazine, periodical, film, videotape, computer disk or any
2 other media of material containing child pornography; second,
3 that the photographs contained at least one image of child
4 pornography; third, that the defendant knew that the
5 photographs contained at least one image of child pornography;
6 and, fourth, that the image of child pornography was mailed,
7 shipped or transported using any means or facility of
8 interstate or foreign commerce, including by computer.

9 The government also would be required to demonstrate
10 by a preponderance of the evidence that venue is proper in the
11 Southern District of New York.

12 The government's proof at trial would include, among
13 other things, images of child pornography recovered during a
14 search of the defendant's computer; the defendant's postarrest
15 statement admitting that he knowingly possessed child
16 pornography on his computer and that he downloaded the child
17 pornography from the internet; and evidence that the computer
18 at issue was located in the defendant's residence in Orange
19 County, New York.

20 To clarify, it's Westchester, your Honor.

21 THE COURT: Westchester County.

22 MR. ANDREWS: Yes.

23 THE COURT: Mr. Tassone, did you hear and understand
24 what the Assistant United States Attorney said?

25 THE DEFENDANT: Yes, your Honor.

CHRISTINA M. ARENDS-DIECK, RPR, RMR, CRR
(914) 390-4103

2019citasspcf

1 THE COURT: Do you understand the elements of the
2 offense to which you are offering a guilty plea?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: At this time, how do you wish to plead to
5 the charge of possession of child pornography as set forth in
6 the felony information?

7 THE DEFENDANT: Guilty, your Honor.

8 THE COURT: Has anyone threatened you or coerced you
9 or pressured you improperly in order to get you to plead guilty
10 to this charge?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Has anyone made any promises to you,
13 other than what is set forth in the plea agreement, in order to
14 induce you to plead guilty?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Has anyone made any specific promise to
17 you about what the sentence of the court will be?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Mr. Tassone, tell me what you did to
20 commit this crime.

21 THE DEFENDANT: From in or about July 2018 up to and
22 including on or about August 4, 2018, in Mamaroneck, New York,
23 which is in the Southern District of New York, I knowingly
24 possessed images and videos of minors under the age of 18,
25 which I obtained via the internet. Those images and videos

2019citasspcf

1 depicted the minors in sexually explicit conduct. I knew what
2 I was doing was illegal. I acted intentionally, your Honor.

3 THE COURT: Mr. Ser, you concede that the internet --
4 your client mentioned downloading from the internet, that that
5 constitutes interstate commerce?

6 MR. SER: Yes, your Honor.

7 THE COURT: Thank you.

8 Mr. Andrews, there is an allegation in the
9 information that the images included images of prepubescent
10 children, prepubescent minors. Is it necessary that the
11 defendant allocute to that?

12 MR. ANDREWS: I don't believe so for purposes of the
13 statute, your Honor.

14 THE COURT: All right. Thank you.

15 Mr. Tassone, did you commit these acts knowingly and
16 willfully?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Did you know it was against the law to do
19 what you were doing?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Is there anything else which either
22 counsel believes the Court needs to elicit from the defendant
23 before making the recommendation contemplated by Rule 11 of the
24 Federal Rules of Criminal Procedure?

25 Mr. Andrews?

2019citasspcf

1 MR. ANDREWS: No, your Honor.

2 THE COURT: Mr. Ser?

3 MR. SER: No, your Honor.

4 THE COURT: Mr. Ser, do you know of any reason why
5 the Court should not recommend acceptance of your client's plea
6 of guilty?

7 MR. SER: No, your Honor.

8 THE COURT: Mr. Andrews, is there any reason why the
9 Court should not recommend acceptance of the plea?

10 MR. ANDREWS: No, your Honor.

11 THE COURT: Mr. Tassone, in light of everything that
12 has been said here today, including a statement of the charge
13 against you, the possible penalties you face and the rights you
14 are giving up, is it still your wish to plead guilty to the
15 charge set forth in the pending felony information?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Upon this allocution, I find that the
18 defendant, Giovanni Tassone, is fully competent and capable of
19 entering an informed plea, the plea is knowing and voluntary
20 and is supported by an independent factual basis for each and
21 every element of the crime charged. Accordingly, I
22 respectfully report and recommend to Judge Román that the plea
23 should be accepted and that the defendant should be adjudged
24 guilty of the offense charged in the felony information.

25 I direct that a presentence report be conducted by

2019citasspcf

1 the Department of Probation.

2 Mr. Tassone, after this proceeding, you are to go to
3 the Department of Probation on the ground floor of this
4 building, and Mr. Ser will accompany you. Either today or on
5 some other day that will be scheduled, you will be interviewed
6 by a representative of the Department of Probation. I'm sure
7 that Mr. Ser will assist you in connection with that interview
8 and you are absolutely entitled to have him present during the
9 interview if you wish. You must be fully honest and truthful
10 during that interview because if it comes to the Court's
11 attention that you have provided false, incomplete or
12 misleading information, that may be held against you at the
13 time of sentencing. Do you understand that, sir?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Just a reminder, Mr. Ser, the interview
16 with Probation is to be scheduled to occur within the next 14
17 days, although we do have two federal holidays and I believe
18 two additional days that the Court is closed, so I'm sure that
19 a few extra days won't do damage to the schedule.

20 And, Mr. Andrews, likewise, the prosecution case
21 summary for purposes of the presentence report is supposed to
22 be delivered to Probation no later than 14 days from today.

23 My suggestion as to both of those deadlines is that
24 you make sure it's accomplished by January 3rd, which is the
25 Friday after New Year's Day. I think that's fair.

2019citasspcf

1 I further direct the Clerk of the Court to provide a
2 transcript of these proceedings setting forth my report and
3 recommendation to Judge Román. The transcript is to come to me
4 for review.

5 Bail is continued.

6 The matter is adjourned for sentencing Friday, March
7 20th, 2020 at 10:00 a.m. Counsel should contact Judge Román's
8 chambers in advance of that date to confirm the date and time
9 of sentencing.

10 Is there anything further?

11 Mr. Andrews?

12 MR. ANDREWS: No, your Honor.

13 THE COURT: Mr. Ser?

14 MR. SER: No, your Honor.

15 THE COURT: Thank you very much. We are adjourned.

16 -----
17
18
19
20
21
22
23
24
25